

1-1 By: Campbell, Zaffirini S.B. No. 1440
1-2 (In the Senate - Filed March 12, 2015; March 30, 2015, read
1-3 first time and referred to Committee on Agriculture, Water, and
1-4 Rural Affairs; May 6, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 6, 2015, sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | | | X | |
| 1-12 | X | | | |
| 1-13 | | | X | |
| 1-14 | X | | | |
| 1-15 | X | | | |

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1440 By: Perry

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the territory, jurisdiction, board composition,
1-20 elections, and powers of the Barton Springs-Edwards Aquifer
1-21 Conservation District, including its authority to regulate certain
1-22 wells for the production of groundwater; imposing a cap on certain
1-23 fees.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 8802.003, Special District Local Laws
1-26 Code, is amended to read as follows:

1-27 Sec. 8802.003. DISTRICT TERRITORY. (a) The district is
1-28 composed of:

1-29 (1) the territory described by the Texas Water
1-30 Commission's August 15, 1986, order, as that territory may have
1-31 been modified:

1-32 (A) by actions of the board through resolutions
1-33 dated August 8, 1987, August 13, 1987, January 24, 2002, May 10,
1-34 2002, and June 23, 2011; or

1-35 (B) under:

1-36 (i) [~~(1)~~] Subchapter J, Chapter 36, Water
1-37 Code; or

1-38 (ii) [~~(2)~~] other law;

1-39 (2) the shared territory described by Section
1-40 8802.0035(a); and

1-41 (3) the territory described as follows: beginning at
1-42 a point at the intersection of the northeastern district boundary
1-43 as it existed on January 1, 2015, and the Colorado River, running
1-44 east along the southern bank of the Colorado River to a point where
1-45 the Colorado River intersects U.S. Highway 183, then south along
1-46 U.S. Highway 183 to a point where U.S. Highway 183 intersects the
1-47 current eastern boundary of the district, then generally west and
1-48 north following along the district boundary as it existed on
1-49 January 1, 2015, to the place of beginning.

1-50 (b) Any boundary reference under Subsection (a)(3) to a
1-51 highway, street, road, avenue, boulevard, or lane shall mean the
1-52 centerline of the boundary.

1-53 SECTION 2. Subchapter A, Chapter 8802, Special District
1-54 Local Laws Code, is amended by adding Section 8802.0035 to read as
1-55 follows:

1-56 Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The
1-57 territory of the district includes any territory that is:

1-58 (1) inside the boundaries of the Edwards Aquifer
1-59 Authority;

1-60 (2) in Hays County; and

1-61 (3) not within the boundaries existing as of January
1-62 1, 1989, of any other district with the authority to regulate
1-63 groundwater under Chapter 36, Water Code, or prior laws.

2-1 (b) The Edwards Aquifer Authority has jurisdiction over any
 2-2 well that is drilled to produce water from the Edwards Aquifer in
 2-3 the shared territory described by Subsection (a).

2-4 (c) The district has jurisdiction over groundwater and any
 2-5 well that is drilled to produce water from any aquifer other than
 2-6 the Edwards Aquifer in the shared territory described by Subsection
 2-7 (a).

2-8 (d) The district has jurisdiction over groundwater and any
 2-9 well that is drilled to produce water from the Edwards Aquifer or
 2-10 any other aquifer in the territory described by Section
 2-11 8802.003(a)(1) or (3). For territory annexed in accordance with
 2-12 board resolutions dated January 24, 2002, the district shall share
 2-13 jurisdiction with the Plum Creek Conservation District, which also
 2-14 includes that territory. Jurisdiction shall be shared under the
 2-15 terms of an agreement authorized by Chapter 791, Government Code,
 2-16 in a manner that ensures that the districts do not exercise their
 2-17 jurisdiction in the shared territory at the same time and for the
 2-18 same purpose.

2-19 (e) The district's jurisdiction over any well that is
 2-20 drilled to produce water in the territory described in Section
 2-21 8802.003(a)(1), including a well that is used to recover water that
 2-22 has been injected as part of an aquifer storage and recovery
 2-23 project, applies to the territory described by Section
 2-24 8802.003(a)(3) and all wells for which the district has
 2-25 jurisdiction in the shared territory described by this section.

2-26 SECTION 3. Sections 8802.051 and 8802.052, Special District
 2-27 Local Laws Code, are amended to read as follows:

2-28 Sec. 8802.051. DIRECTORS; TERMS. (a) The district is
 2-29 governed by a board of seven [~~five~~] directors who serve staggered
 2-30 four-year terms.

2-31 (b) ~~Three~~ [~~At least two~~] directors must be elected by voters
 2-32 residing in the territory composed of:

2-33 (1) ~~director districts four and five as adopted by the~~
 2-34 ~~district on November 17, 2011; and~~

2-35 (2) ~~the territory described by Section 8802.003(a)(3)~~
 2-36 ~~[city of Austin].~~

2-37 (c) ~~Four~~ directors must be elected by voters residing
 2-38 outside the territory described by Subsection (b) and two of the
 2-39 ~~four~~ directors must reside in Hays County.

2-40 Sec. 8802.052. ELECTION DATE. An election shall be held to
 2-41 elect the appropriate number of directors on the [~~spring~~] uniform
 2-42 election date ~~in November of each even-numbered year.~~

2-43 SECTION 4. Section 8802.053, Special District Local Laws
 2-44 Code, is amended by amending Subsections (a), (c), and (d) and
 2-45 adding Subsection (f) to read as follows:

2-46 (a) The district is divided into seven [~~five~~] numbered,
 2-47 single-member districts for electing directors.

2-48 (c) As soon as practicable after the publication of each
 2-49 federal decennial census, the board shall revise the single-member
 2-50 districts as the board considers appropriate to reflect population
 2-51 changes. When the board revises the single-member districts under
 2-52 this subsection, the board shall place three [~~two~~] of the districts
 2-53 entirely inside and four of the districts entirely outside the
 2-54 territory described by Section 8802.051(b) [~~+~~].

2-55 ~~[(1) entirely within the boundaries of the city of~~
 2-56 ~~Austin, as those boundaries exist at that time; or~~

2-57 ~~[(2) within the boundaries of the city of Austin, as~~
 2-58 ~~those boundaries exist at that time, but also including~~
 2-59 ~~unincorporated areas or other municipalities that are surrounded~~
 2-60 ~~wholly or partly by the boundaries of the city of Austin if the~~
 2-61 ~~areas or municipalities are noncontiguous to the territory of any~~
 2-62 ~~other single-member district].~~

2-63 (d) ~~If the district is required to create single-member~~
 2-64 ~~districts that do not comply with Sections 8802.051(b) and (c) to~~
 2-65 ~~satisfy standards under federal law, the board shall revise the~~
 2-66 ~~single-member districts as the board considers appropriate under~~
 2-67 ~~the federal law standards [Changes in the boundaries of the city of~~
 2-68 ~~Austin between revisions of the single-member districts under~~
 2-69 ~~Subsection (c) do not affect the boundaries of the single-member~~
 2-70 ~~districts].~~

2-71 (f) ~~At the first regularly scheduled election of directors~~

3-1 after the board is expanded from five to seven directors, directors
3-2 elected to fill any vacant positions shall cast lots to determine
3-3 which of those directors shall serve a two-year term and which shall
3-4 serve a four-year term. Lots must be determined so that not more
3-5 than four directors' terms expire in any even-numbered year.

3-6 SECTION 5. Section 8802.1045, Special District Local Laws
3-7 Code, is amended by adding Subsection (g) to read as follows:

3-8 (g) Notwithstanding Subsection (b), before January 1, 2017,
3-9 the board may not charge an annual production fee higher than the
3-10 rates set forth under Subsection (a) for a well located in the
3-11 territory described by Section 8802.003(a)(3) or 8802.0035(a). The
3-12 district may increase the annual production fee under this
3-13 subsection by not more than 10 cents per thousand gallons per year
3-14 beginning January 1, 2018, for water permitted for nonagricultural
3-15 purposes, until the annual production fee is equal to the maximum
3-16 amount set forth in Subsection (b).

3-17 SECTION 6. Section 8802.105, Special District Local Laws
3-18 Code, is amended by amending Subsection (a) and adding Subsection
3-19 (a-1) to read as follows:

3-20 (a) In this section, "Consumer Price Index" means the annual
3-21 revised Consumer Price Index for All Urban Consumers, as published
3-22 by the Bureau of Labor Statistics of the United States Department of
3-23 Labor or a similar index if that index is unavailable. For
3-24 calculation purposes, the beginning base month is December 2014.

3-25 (a-1) Each year the board may assess against the City of
3-26 Austin a water use fee in an amount not to exceed the lesser of \$1
3-27 million as adjusted to reflect the percentage change during the
3-28 preceding year in the Consumer Price Index or 60 percent of the
3-29 total funding the district expects to receive for the next fiscal
3-30 year from water use fees assessed against Austin and other
3-31 nonexempt users in that year as computed[, subject to the
3-32 computation] under Subsection (b).

3-33 SECTION 7. Subchapter C, Chapter 8802, Special District
3-34 Local Laws Code, is amended by adding Section 8802.111 to read as
3-35 follows:

3-36 Sec. 8802.111. AUTHORITY TO CONSIDER MITIGATION PLAN.

3-37 (a) If an applicant for a permit or permit amendment submits to the
3-38 district with the permit application or permit amendment
3-39 application a plan for mitigating any negative impacts to
3-40 groundwater resources or to other wells that may arise from the
3-41 production of groundwater by the well or wells for which the permit
3-42 or permit amendment is sought, the district may:

3-43 (1) consider the plan for mitigation in deciding
3-44 whether to grant or deny the application; and

3-45 (2) include special terms and conditions requiring
3-46 mitigation in a permit or permit amendment that is approved by the
3-47 board for the applicant.

3-48 (b) Regardless of whether an applicant for a permit or
3-49 permit amendment submits to the district a plan for mitigation, the
3-50 district and an applicant may negotiate a plan to mitigate any
3-51 negative impacts to groundwater resources or to other wells that
3-52 may arise from the production of groundwater by the well or wells
3-53 for which the permit or permit amendment is sought, and the district
3-54 may include the negotiated mitigation plan as a special term or
3-55 condition of the permit or permit amendment. The district may not
3-56 require an applicant to agree to a mitigation plan that was not
3-57 submitted by the applicant.

3-58 (c) A mitigation plan described by Subsection (a) or (b) may
3-59 include payment of a fee by the applicant for a permit or permit
3-60 amendment to the district in an amount sufficient to mitigate the
3-61 effects of reduced artesian pressure or the drawdown of the water
3-62 table on other wells in the district. If the mitigation plan is
3-63 approved by the district as a special term or condition of the
3-64 permit as submitted by, or as negotiated with, the applicant, the
3-65 district shall establish written procedures for the use of revenue
3-66 derived from fees paid by the applicant as part of the mitigation
3-67 plan and shall include the written procedures as a special term or
3-68 condition of the permit or permit amendment. The written
3-69 procedures may include use of the mitigation plan fee revenue to
3-70 deepen water wells or to lower pumps, to drill and equip new wells,
3-71 or to take other measures to mitigate impacts on water wells that

4-1 are negatively impacted by the production of groundwater by the
4-2 well or wells for which the permit or permit amendment is approved
4-3 by the district.

4-4 (d) Nothing in this section shall be construed to limit the
4-5 authority of the district to include as a special term or condition
4-6 of a permit a requirement that the permit holder reduce or cease
4-7 groundwater production during certain hydrological conditions.

4-8 SECTION 8. (a) In this section:

4-9 (1) "District" means the Barton Springs-Edwards
4-10 Aquifer Conservation District.

4-11 (2) "Maximum production capacity" means the maximum
4-12 production capacity of a well, which may be based on a 36-hour pump
4-13 test conducted at the time the well was initially constructed or
4-14 placed into service.

4-15 (b) A person operating a well before the effective date of
4-16 this Act or who has entered into a contract before the effective
4-17 date of this Act to drill or operate a well that is or will be
4-18 located in the added territory described by Sections 8802.003(a)(3)
4-19 or 8802.0035(a), Special District Local Laws Code, as added by this
4-20 Act, that is subject to the jurisdiction of the district, as
4-21 clarified by this Act, shall file an administratively complete
4-22 permit application with the district not later than three months
4-23 after the effective date of this Act for the drilling, equipping,
4-24 completion, or operation of any well if the well requires a permit
4-25 under the rules or orders of the district. The person may file the
4-26 permit application for an amount of groundwater production not to
4-27 exceed the maximum production capacity of the well.

4-28 (c) The district shall issue a temporary permit to a person
4-29 who files an application under Subsection (b) of this section
4-30 without a hearing on the application not later than the 30th day
4-31 after the date of receipt of the application. The district shall
4-32 issue the temporary permit for the groundwater production amount
4-33 set forth in the application. The temporary permit issued under
4-34 this subsection shall provide the person with retroactive and
4-35 prospective authorization to drill, operate, or perform another
4-36 activity related to a well for which a permit is required by the
4-37 district for the period of time between the effective date of this
4-38 Act and the date that the district takes a final, appealable action
4-39 on issuance of a regular permit pursuant to the permit application
4-40 if:

4-41 (1) the person's drilling, operating, or other
4-42 activities associated with the well are consistent with the
4-43 authorization sought in the permit application;

4-44 (2) the person timely pays to the district all
4-45 administrative fees and fees related to the amount of groundwater
4-46 authorized to be produced pursuant to the temporary permit in the
4-47 same manner as other permit holders in the district; and

4-48 (3) the person complies with other rules and orders of
4-49 the district applicable to permit holders.

4-50 (d) The temporary permit issued under Subsection (c) of this
4-51 section does not confer any rights or privileges to the permit
4-52 holder other than those set forth in this section. After issuing
4-53 the temporary permit, the district shall process the permit
4-54 application for notice, hearing, and consideration for issuance of
4-55 a regular permit in the same manner that the district processes
4-56 other permit applications not described by this section. The
4-57 district, after notice and hearing, may issue an order reducing the
4-58 amount of groundwater that may be produced under a temporary permit
4-59 under this section only if the district determines that the amount
4-60 of groundwater being produced under the temporary permit is causing
4-61 a failure to achieve applicable adopted desired future conditions
4-62 for the aquifer. The district bears the burden of proof in
4-63 demonstrating that the amount of groundwater being produced under a
4-64 temporary permit is causing a failure to achieve applicable adopted
4-65 desired future conditions for the aquifer. A person who relies on
4-66 the temporary permit granted by this section to drill, operate, or
4-67 engage in other activities associated with a water well assumes the
4-68 risk that the district may grant or deny, wholly or partly, the
4-69 permit application when the district takes final action after
4-70 notice and hearing to issue a regular permit pursuant to the
4-71 application.

5-1 (e) The holder of a temporary permit subject to a district
5-2 order under Subsection (d) of this section to reduce the amount of
5-3 groundwater production from the permitted well may contest the
5-4 reduction by requesting a contested case hearing to be conducted by
5-5 the State Office of Administrative Hearings in the manner provided
5-6 by Sections 36.416, 36.4165, and 36.418, Water Code. The district
5-7 shall contract with the State Office of Administrative Hearings to
5-8 conduct the hearing as provided by those sections of the Water Code.
5-9 To the extent possible, the State Office of Administrative Hearings
5-10 shall expedite a hearing under this subsection.

5-11 SECTION 9. (a) The legislature validates and confirms all
5-12 acts and proceedings of the board of directors of the Barton
5-13 Springs-Edwards Aquifer Conservation District that were taken
5-14 before the effective date of this Act.

5-15 (b) Subsection (a) of this section does not apply to any
5-16 matter that on the effective date of this Act:

5-17 (1) is involved in litigation if the litigation
5-18 ultimately results in the matter being held invalid by a final
5-19 judgment of a court; or

5-20 (2) has been held invalid by a final judgment of a
5-21 court.

5-22 SECTION 10. (a) Not later than three months after the
5-23 effective date of this Act, the board of directors of the Barton
5-24 Springs-Edwards Aquifer Conservation District shall appoint one
5-25 temporary director to the board to represent the territory
5-26 described by Section 8802.003(a)(3), Special District Local Laws
5-27 Code, as added by this Act, and one temporary director to represent
5-28 the territory described by Section 8802.0035(a), Special District
5-29 Local Laws Code, as added by this Act.

5-30 (b) The temporary directors appointed under Subsection (a)
5-31 of this section shall serve at large until the next general election
5-32 of directors of the district under Section 8802.052, Special
5-33 District Local Laws Code, as amended by this Act.

5-34 (c) The board of directors of the Barton Springs-Edwards
5-35 Aquifer Conservation District shall adjust the board member terms
5-36 of office to conform to the new election date under Section
5-37 8802.052, Special District Local Laws Code, as amended by this Act.

5-38 SECTION 11. (a) The legal notice of the intention to
5-39 introduce this Act, setting forth the general substance of this
5-40 Act, has been published as provided by law, and the notice and a
5-41 copy of this Act have been furnished to all persons, agencies,
5-42 officials, or entities to which they are required to be furnished
5-43 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
5-44 Government Code.

5-45 (b) The governor, one of the required recipients, has
5-46 submitted the notice and Act to the Texas Commission on
5-47 Environmental Quality.

5-48 (c) The Texas Commission on Environmental Quality has filed
5-49 its recommendations relating to this Act with the governor, the
5-50 lieutenant governor, and the speaker of the house of
5-51 representatives within the required time.

5-52 (d) All requirements of the constitution and laws of this
5-53 state and the rules and procedures of the legislature with respect
5-54 to the notice, introduction, and passage of this Act are fulfilled
5-55 and accomplished.

5-56 SECTION 12. This Act takes effect immediately if it
5-57 receives a vote of two-thirds of all the members elected to each
5-58 house, as provided by Section 39, Article III, Texas Constitution.
5-59 If this Act does not receive the vote necessary for immediate
5-60 effect, this Act takes effect September 1, 2015.

5-61 * * * * *